

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21010

ATLAS VAN LINES, INC. ET AL. — POOLING AGREEMENT

Decided: February 23, 2005

Atlas Van Lines, Inc. (Atlas), together with Atlas agents that participate in transportation of household goods of military and civilian personnel being relocated by the United States Department of Defense (military traffic) (collectively, pooling agents), filed a verified application under 49 U.S.C. 14302 for approval of a revised pooling agreement among Atlas and its pooling agents.¹ Under the current pooling agreement, effective July 15, 1983, pooling agents may hold only narrowly defined, Federally issued authorities that are limited to carrying military traffic. For all other traffic, pooling agents operate under Atlas' authority.

We note at the outset that the application was filed for approval prior to the proposed effective date of December 1, 2004, and under the applicable statute and the Board's rules, the matter should have been acted upon prior to that date. We take all deadlines seriously and regret that we have not acted on the application until now.

According to Atlas, the proposed revised agreement would account for the requirement of the Department of Defense (DOD) that all carriers hold their own authority in order to qualify for the awarding of military traffic and the regulatory changes effected by the passage of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA). The Interstate Commerce Commission (ICC) implemented TIRRA by prospectively eliminating all limitations on authorities issued to motor common and contract carriers, including geographic and commodity limitations (except for the distinction between household goods and general commodities). Thus, new entrants into the household goods transportation industry can only obtain broad, geographically unrestricted authorities, which are prohibited under the current pooling agreement. As the pool of carriers eligible to carry military traffic under the current agreement has dwindled, Atlas wishes to modify the agreement in a way that would add carriers that now can only obtain broad authorities but would preclude most pooling agents from using those authorities for other

¹ Atlas concurrently filed a motion for a protective order, which was granted in a decision served on November 24, 2004.

than military traffic.² Accordingly, the proposed agreement would enable the pooling agents to satisfy the requirements of the DOD but would continue to limit the potential non-pool operations that Atlas pooling agents could conduct.

Under 49 U.S.C. 14302(b) and 49 CFR 1184.3, we must determine whether the proposed pooling agreement is in the interest of better service to the public and of economy in operation and whether it would unreasonably restrain competition. Under 49 U.S.C. 14302(c)(4), a proposed revised pooling agreement is presumed to satisfy these criteria if the practices proposed to be carried out under the proposed agreement are the same as or similar to practices carried out under household goods pooling agreements approved by the ICC prior to January 1, 1996, the effective date of section 14302.

The proposed agreement is sufficiently similar to the current agreement to presumptively satisfy the requirements of 49 U.S.C. 14302 and 49 CFR 1184.3. The current agreement, which was effective prior to that date, precludes pooling agents from holding authorities allowing transportation of goods other than military traffic; the proposed agreement would limit the use of such authorities for other than military traffic. Under both agreements, the result is the same: pooling agents would operate under their own authorities to carry military traffic and operate under Atlas' authority to carry other traffic. The disparity between the two agreements is a distinction without a difference.³ Therefore, the proposed agreement is presumed to be in the interest of better service to the public and of economy in operation and not unreasonably restrain competition, and it should be approved without a hearing.

The ICC has approved pooling agreements for household goods carriers that limit the ability of carrier-agents to compete with their core carrier. For example, the ICC, in approving a component of a United Van Lines (United) pooling agreement that required all shipments moving over 1,700 miles to be transported pursuant to United's operating authority, found that the public would "be better served by improving United's ability to compete with its non-agent competitors than by increasing the level of competition within the United system." See United Van Lines, Inc. – Pooling Agreement Modification, Docket No. MC-F-4901 et al., slip op. at 11 (ICC served May 25, 1984). This same reasoning applies to Atlas' present petition.

Finally, we retain jurisdiction to require submission of additional information should we find it necessary in the future. If we find at any time that the transaction has become an anticompetitive one, we retain the power to suspend operation of the pool during the pendency of a public hearing

² An exception is made for "military-only agents" who act as agents for other van lines, but occasionally act as booking agents for Atlas on shipments of military traffic awarded to Atlas.

³ Cf. Three Way Corp. v. ICC, 792 F.2d 232, 236 (D.C. Cir. 1986).

concerning the criteria set forth in 49 U.S.C. 14302 and to impose such terms and conditions, if any, as are just and reasonable.

We find:

The proposed modification is in the interest of better service to the public and of economy in operation and does not unreasonably restrain competition and must therefore be approved without a hearing. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application of Atlas and its carrier-agents to modify their pooling plan as set forth in its petition is approved and authorized.
2. This decision is effective on its service date.
3. A copy of this decision will be served on (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, S.W., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary